

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS BRIAN C. KELLER		DEFENDANTS NCO FINANCIAL SYSTEMS, INC.																													
<p>(b) County of Residence of First Listed Plaintiff _____</p> <p>(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)</p> <p>Craig Thor Kimmel, Esquire Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888</p>		<p>County of Residence of First Listed Defendant _____</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>																													
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																													
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> DEF <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)																													
		Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6																													
IV. NATURE OF SUIT (Place an "X" in One Box Only)																															
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V. ORIGIN (Place an "X" in One Box Only)				Appeal to District Judge from Magistrate Judgment																											
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7																															
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C SECTION 1692																															
VI. CAUSE OF ACTION Brief description of cause: Fair Debt Collection Practices Act																															
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																										
VIII. RELATED CASE(S) (See instructions):				DOCKET NUMBER																											
Explanation: <i>(6-10-11)</i>																															
DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____																															

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 5516 North Del Ray Dr. OTis Orchards, WV 99027

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction:

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(s))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts

2. FELA

2. Airplane Personal Injury

3. Jones Act-Personal Injury

3. Assault, Defamation

4. Antitrust

4. Marine Personal Injury

5. Patent

5. Motor Vehicle Personal Injury

6. Labor-Management Relations

6. Other Personal Injury (Please

specify)

7. Civil Rights

7. Products Liability

8. Habeas Corpus

8. Products Liability — Asbestos

9. Securities Act(s) Cases

9. All other Diversity Cases

10. Social Security Review Cases

(Please specify)

11. All other Federal Question Cases

15 U.S.C. § 1692

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 6-10-11

Craig Thor Kimmel
Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6-10-11

Craig Thor Kimmel
Attorney-at-Law

57100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Bryan C. Keller

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()

(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

6-10-11

Date

Craig Therkimbel
Attorney-at-law

215-540-8888

Telephone

817-788-2864

FAX Number

Bryan C. Keller
Attorney for

Kimmel@creditlaw.com

E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

BRYAN C. KELLER ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C.,
alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established

- 1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).
- 2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
- 3
- 4

PARTIES

5 6. Plaintiff is a natural person residing in Otis Orchards, Washington, 99027.
6 7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C.
7
8 §1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).

9 8. Defendant is a national debt collection company with its corporate headquarters
10 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

11 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
12 and repeatedly contacted Plaintiff in an attempt to collect a debt.

13 10. Defendant acted through its agents, employees, officers, members, directors,
14 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

17 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
18 which prohibits a catalog of activities in connection with the collection of debts by third parties.
19 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
20 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
21 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
22 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
23 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
24 unconscionable conduct, both generally and in a specific list of disapproved practices.
25

1 12. In particular, the FDCPA broadly enumerates several practices considered
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
5 person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt
6 collector may not use any false, deceptive, or misleading representation or means in connection
7 with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use
8 unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
12 connection with the collection of a debt.

14 13. In enacting the FDCPA, the United States Congress found that "[t]here is
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
16 debt collectors," which "contribute to the number of personal bankruptcies, to marital instability,
17 to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress
18 additionally found existing laws and procedures for redressing debt collection injuries to be
19 inadequate to protect consumers. 15 U.S.C. § 1692b.

20 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
21 collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection
22 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
23 collection practices are not competitively disadvantaged, and to promote consistent State action
24 to protect consumers against debt collection abuses." 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. Beginning in or before 2010, and continuing through February 2011, Defendant and others it retained constantly placed harassing and abusive collection calls to Plaintiff, seeking and demanding payment for an alleged consumer debt of another person.

16. Upon information and belief, the alleged debt Defendant was seeking to collect was a student loan.

17. The alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.

18. Defendant, its employees, agents and servants, harassed Plaintiff by making continuous and repeated calls to his home, cellular and work telephone numbers.

19. Defendant informed Plaintiff that it was seeking to collect a debt from "Brian Keller" for a student loan owed to Portland State University.

20. Plaintiff informed Defendant that it was contacting the wrong person, he did not know the individual Defendant was attempting to contact, and he had paid all of his student loans.

21. Despite knowing that it was contacting the wrong person, Defendant continued to contact Plaintiff in its attempts to collect a debt of another person.

22. Also, Plaintiff made repeated demands that Defendant and its employees cease contacting him.

23. Again, Defendant ignored Plaintiff's instructions and continued to contact him in its attempts to collect a debt of another person.

24. Most recently, on February 11, 2011, Defendant contacted Plaintiff in its attempts

1 to collect a debt of another person.

2 25. Defendant failed to investigate or verify contact information prior to and after
3 calling Plaintiff.

4 26. Defendant failed to update its records to avoid further harassment of Plaintiff.

5 27. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of
6 privacy.

7 28. Defendant's repetitive calls to Plaintiff served no other purpose but to harass
8 Plaintiff.

9 **CONSTRUCTION OF APPLICABLE LAW**

10 29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
11 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
12 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
13 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
14 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
15 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

16 30. The FDCPA is a remedial statute, and therefore must be construed liberally in
17 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
18 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
19 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
20 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
21 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
22 2002).
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31. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I

32. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated §1692b(2) of the FDCPA by informing Plaintiff of another person's debt;
- c. Defendant violated §1692b(3) of the FDCPA by calling Plaintiff more than once in connection for the collection of a debt for another individual;
- d. Defendant violated §1692c(b) of the FDCPA by communicating with Plaintiff about a debt allegedly owed by another person;

- 1 e. Defendant violated §1692d of the FDCPA by harassing Plaintiff in
2 connection with the collection of an alleged debt;
- 3 f. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's
4 telephone to ring repeatedly or continuously with the intent to harass, annoy
5 or abuse Plaintiff;
- 6 g. Defendant violated §1692f of the FDCPA by using unfair and unconscionable
7 means with Plaintiff to collect or attempt to collect a debt; and
- 8 h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
9 and failed to comply with the FDCPA.

10 WHEREFORE, Plaintiff, BRYAN C. KELLER, respectfully prays for a judgment as
11 follows:

- 13 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
14 1692k(a)(1);
- 15 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
16 15 U.S.C. § 1692k(a)(2)(A);
- 17 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
18 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 19 d. Any other relief deemed appropriate by this Honorable Court.

21 **DEMAND FOR JURY TRIAL**

22 PLEASE TAKE NOTICE that Plaintiff, BRYAN C. KELLER, demands a jury trial in
23 this case.

1 DATED: 6-10-11

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RESPECTFULLY SUBMITTED,
KIMMEL & SILVERMAN, P.C.

By: _____

Craig Thor Kimmel
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com